# Lembaga Kemajuan Tanah Persekutuan v Tenaga Nasional Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO P 1408 OF 1984
KC VOHRAH J
24 MARCH 1997

***Tort** — Negligence — Rule in Rylands v Fletcher — Escape of fire — Damage to adjoining land — Common law presumption that fire which began on a defendant's property arose from act or default for which he was answerable — Whether the presumption applies in Malaysia — Liability for escape of fire under negligence and the rule in Rylands v Fletcher — Whether defendant was liable to damage caused to plaintiff's land*

In March 1983, vast tracts of rubber trees in several blocks of the plaintiff's rubber plantation scheme ('the scheme') were destroyed by five fires. The plaintiff claimed that all the fires started from a strip of land which belonged to the defendant ('the LLN reserve'). The LLN reserve ran through a forest reserve which for the most part, where it traversed the scheme, abutted on the scheme. The plaintiff further claimed that all the five fires spread or escaped from the LLN reserve due to the negligence of the defendant. In respect of the first and fourth fires, it was shown that the burning vegetation on the LLN reserve were those that had been cut by the defendant's employees or agents and left lying there under hot dry weather conditions prevailing at that time. As for the third fire, evidence were tendered to shown that it was started on the LLN reserve by one or more of the employees of the defendant. As for the fifth fire, it was argued that the fire could have spread to the plaintiff's land through sparks carried by the wind from dead standing trees which were burning in the forest reserve.

**Held**, granting judgment for the plaintiff in respect of the first, third and fourth fires:

(1) The common law presumption that a fire which began on a man's property arose from some act or default for which he was answerable has no application in Malaysia; the plaintiff has to establish without the aid of the presumption that: (a) the defendant himself or some person for whose conduct he was answerable had been guilty of some negligent act or omission which was a cause either of the commencement of the fire or of its spreading to the plaintiff's premises; or (b) that the defendant had caused or permitted to exist on their premises a source of fire danger constituting a material injury to the plaintiff's property (see p 791E–I); *Leong Bee & Co v Ling Nam Rubber Works* [1970] 2 MLJ 45 followed.

(2) An occupier of a house or land who starts a fire either intentionally or by negligence is bound at his peril to keep it from doing damage to others subject only to certain exceptions, and is liable for the escape of the fire which is due to the negligence not only

of his servants but also of his independent contractors and of his guests and of anyone who is there with his leave or licence (see pp 791D–E and 792B–C); *Mulholland & Ted v Baker* [1939] 3 All ER 253 and *H & N Emanuel Ltd v Greater London Council & Anor* [1971] 2 All ER 835 followed.

(3) Where there is no escape of anything brought onto the defendant's land, the plaintiff must prove: (i) the defendant had brought onto his land things likely to catch fire and kept them there in such conditions that if they did ignite, the fire would be likely to spread to the plaintiff's land; (ii) he did so in the course of some non-natural use of the land; and (iii) the things ignited and the fire spread to the plaintiff's land (see p 793D–H); *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530 followed.

(4) Applying the above principles and after considering the facts of the case, it was clear that the defendant was liable for the first, third and fourth fires.

In respect of the first and fourth fires, the defendant would have known that fires could break out from the combustible cut vegetation and if they ignited, fire would certainly spread, as it did, to the plaintiff's scheme. The defendant's use of the land in these two locations was non-natural and therefore the defendant was liable for the first and fourth fires under the rule in *Rylands v Fletcher*. The defendant, however, was not liable for the second fire as there was no evidence of anyone having been seen to have started the fire. Also, no dried or drying cut vegetation had been found at the location and this was also not a case to which the principle in *Ryland v Fletcher* could apply. As for the third fire, the facts showed that it was started by one or more of the defendant's employees. The defendant was liable in negligence for the act or acts of its servant or servants for the third fire. As for the fifth fire, it probably spread through sparks carried by the wind from dead standing trees which were burning in the forest reserve. However, the defendant could not be blamed for the ensuing fire spreading to the forest reserve and eventually spreading to the plaintiff's land which abutted on the forest reserve; the defendant did not cause the fire to spread to the forest reserve. Therefore, the defendant could not be held liable for the fifth fire (see pp 792A, E–H and 794B–E).

**[Bahasa Malaysia summary**

Dalam bulan Mac 1983, sebahagian besar kawasan pokok getah dalam beberapa blok skim penanaman pokok getah ('skim tersebut') kepunyaan plaintif dimusnahkan oleh lima kebakaran. Plaintif mendakwa bahawa kesemua kebakaran bermula dari sejaluran tanah yang dimiliki oleh defendan ('rizab LLN'). Rizab LLN memotong melalui hutan simpan yang mana sebahagian besarnya, di mana ia merentasi skim tersebut, bersempadan dengan skim tersebut. Plaintif

selanjutnya mendakwa bahawa kelima-lima kebakaran itu merebak atau terlepas dari rizab LLN akibat kecuaian defendan. Berkenaan dengan kebakaran pertama dan keempat, adalah ditunjukkan bahawa tumbuh-tumbuhan yang terbakar di rizab LLN adalah tumbuh-tumbuhan yang telah dipotong oleh pekerja atau ejen defendan dan dibiarkan di situ di bawah keadaan cuaca kering dan panas pada masa itu. Berkenaan dengan kebakaran ketiga, bukti dikemukakan untuk menunjukkan bahawa ia dimulakan atas rizab LLN oleh seorang atau lebih daripada seorang pekerja defendan. Berkenaan dengan kebakaran kelima, adalah dihujahkan bahawa api mungkin telah merebak ke tanah plaintif melalui percikan yang dibawa oleh angin daripada pokok-pokok mati yang terbakar di hutan simpan.

**Diputuskan**, memberikan penghakiman kepada plaintif berkaitan dengan kebakaran yang pertama, ketiga dan keempat:

(1) Tanggapan common law bahawa sesuatu kebakaran yang telah bermula di atas harta seseorang adalah berbangkit dari sesuatu perbuatan atau keingkaran yang mana ia adalah dipertanggungjawabkan tidak terpakai di Malaysia; plaintif mesti membuktikan tanpa bantuan tanggapan tersebut bahawa: (a) defendan sendiri atau orang lain yang perilakunya ia bertanggungjawab telah bersalah kerana suatu tindakan atau peninggalan yang cuai yang menjadi punca permulaan kebakaran itu ataupun perebakannya kepada premis plaintif; atau (b) defendan telah menyebabkan atau membenarkan wujudnya atas premis suatu sumber bahaya kebakaran yang menjadi suatu kecederaan material kepada harta plaintif (lihat ms 791E–I); *Leong Bee & Co v Ling Nam Rubber Works* [1970] 2 MLJ 45 diikut.

(2) Seseorang penghuni rumah atau tanah yang memulakan kebakaran sama ada secara sengaja atau secara cuai adalah wajib dengan risikonya sendiri untuk menjauhkannya dari menyebabkan kerosakan kepada orang lain tertakluk kepada kekecualian tertentu, dan adalah bertanggungjawab atas pelepasan kebakaran yang berpunca daripada bukan sahaja kecuaian pekerjanya tetapi juga kontraktor bebas dan oleh tetamunya dan sesiapa yang berada di tempat itu dengan kebenaran atau lesennya (lihat ms 791D–E dan 792B–C); *Mulholland & Ted v Baker* [1939] 3 All ER 253 dan *H & N Emanuel Ltd v Greater London Council & Anor* [1971] 2 All ER 835 diikut.

(3) Di mana tiada pelepasan apa-apa yang dibawa ke tanah defendan, plaintif mesti membuktikan: (i) defendan telah membawa ke tanahnya benda yang mungkin akan terbakar dan menyimpannya dalam keadaaan yang sedemikian hinggakan jika mereka benar-benar menyala, kebakaran berkemungkinan merebak ke tanah plaintif; (ii) dia berbuat demikian semasa kegunaan tanah yang tidak semula jadi; dan (iii) benda-benda itu telah menyala dan kebakaran merebak ke tanah plaintif (lihat ms 793D–H); *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530 diikut.

(4) Dengan memakai prinsip-prinsip di atas dan selepas mempertimbangkan fakta-fakta kes, adalah jelas bahawa defendan bertanggungjawab atas kebakaran pertama, ketiga dan keempat.

Berkenaan dengan kebakaran-kebakaran pertama dan keempat, defendan sepatutnya tahu bahawa kebakaran boleh merebak daripada tumbuh-tumbuhan yang dipotong yang mudah terbakar dan jika ia menyala kebakaran semestinya akan merebak, seperti mana yang berlaku, kepada skim plaintif. Kegunaan tanah oleh defendan di kedua-dua lokasi ini adalah tidak semula jadi dan oleh itu defendan adalah bertanggungjawab atas kebakaran-kebakaran pertama dan keempat menurut rukun dalam *Rylands v Fletcher*. Namun demikian, defendan tidak bertanggungjawab atas kebakaran kedua kerana tiada keterangan tentang sesiapa yang telah dilihat memulakan kebakaran. Juga, tiada tumbuhan kering atau tumbuhan terpotong yang sedang kering telah dijumpai di lokasi itu dan ini juga tidak merupakan kes di mana prinsip dalam *Rylands v Fletcher* adalah terpakai. Mengenai kebakaran ketiga pula, fakta-fakta menunjukkan bahawa ia dimulakan oleh seorang atau lebih pekerja defendan. Defendan bertanggungjawab atas kecuaian akibat tindakan pekerjanya dalam kebakaran ketiga. Berkenaan dengan kebakaran kelima, ia mungkin telah merebak melalui percikan yang dibawa oleh angin daripada pokok-pokok mati yang masih berdiri yang terbakar dalam hutan simpan. Walau bagaimanapun, defendan tidak boleh disalahkan untuk kebakaran yang menyusul yang merebak ke hutan simpanan dan yang akhirnya merebak ke tanah plaintif yang bersempadan dengan hutan simpan; defendan tidak menyebabkan kebakaran merebak ke hutan simpan. Oleh itu, defendan tidak boleh bertanggungjawab atas kebakaran kelima (lihat ms 792A, E–H dan 794B–E).]

## Notes

For cases on the rule in *Rylands v Fletcher*, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 910–926.

## Cases referred to

*Becquet v Mac Carthy* (1831) 2 B & Ad 951 (refd)
*Filliter v Phippard* (1847) 11 QB 347 (refd)
*H & N Emanuel Ltd v Greater London Council & Anor* [1971] 2 All ER 835 (folld)
*Leong Bee & Co v Ling Nam Rubber Works* [1970] 2 MLJ 45 (folld)
*Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530 (folld)
*Mulholland & Ted v Baker* [1939] 3 All ER 253 (folld)
*Musgrove v Pandelis* [1919] 1 KB 314; [1919] 2 KB 43 (folld)
*Rylands v Fletcher* (1868) LR 3 HL 330 (folld)

## Legislation referred to

Electricity Supply (Successor Company) Act 1990 s 3

A *Kulasegaran* (*Rajendran* with him) (*Ranjit Thomas & Kula*) for the plaintiffs.

*Mohd Azmi bin Hashim* (*PH Goh* with him) (*Bakar Khalid & Partners*) for the defendant.

B **KC Vohrah J**: The plaintiff has a large rubber plantation scheme, known as 'Felda Lepar Hilir Dua' ('the scheme') in the state of Pahang which was opened in 1977. It is divided into blocks, each block about 40 to 50 hectares. In March 1983, vast tracts of rubber trees in several blocks in the scheme were destroyed by five fires.

The plaintiff claims that all the five fires started in a strip of land ('the C LLN reserve') which at the relevant time belonged to the Lembaga Letrik Negara ('the LLN').

By virtue of s 3 of the Electricity Supply (Successor Company) Act 1990, and by virtue of the Transfer Date Order 1990 made by the Minister of Energy, Telecommunications and Posts which came into force on D 1 September 1990 under Gazette Notification PU (A) 273/90, all liabilities to which the LLN were subject were transferred to the defendant.

The LLN reserve had erected on it towers between which electrical transmission lines were strung. The LLN reserve runs through a forest reserve of the state of Pahang ('the forest reserve') which for the most part, E where it traverses the scheme, abuts on the scheme. The plaintiff's claim which is in negligence is that the LLN negligently allowed the five dangerous fires to spread or escape from the LLN reserve into the plaintiff's land and severely damage the plaintiff's land and rubber trees.

The LLN reserve with the towers and lines, cut a swath 200ft wide from east (near Kuantan) to west (Mentakab) mostly through the forest F reserve. In the vicinity of the scheme, however, nearer the western part of the scheme, it cuts through and borders on blocks 22A and 23A of the scheme and, nearer the eastern part, it forms the border with the northern part of block 1A. There is no physical barrier between either the forest reserve and the LLN reserve or between these reserves and the scheme G where they abutted on the plaintiff's lands.

The five fires which destroyed four-year old rubber trees in the scheme are the following:

(1) The first fire which was detected on 11 March 1983 in the LLN reserve nearer the eastern part in relation to the scheme and bordering H block 1A and which spread southwards into block 1A and destroyed 20 hectares of rubber trees;

(2) The second fire which was detected on 16 March 1983 in the LLN reserve (which cut across block 22A) nearer the western part in relation to the scheme and which spread southwards into block 22A I and destroyed two hectares of rubber trees;

(3) The third fire which it was alleged was deliberately started on 17 March 1983 in the LLN reserve not far from the location of the second fire which spread northwards into block 23A and destroyed two hectares of rubber trees;

(4) The fourth fire which was detected on 26 March 1983 in the LLN reserve further west than that of the location of the first fire and which spread through the forest reserve southeast to block 22A and northeast to block 23A destroying altogether 24 hectares of rubber trees; and

(5) The fifth fire which was detected on 30 March 1983 in block 20A and which allegedly had spread from the third fire detected on 17 March 1983 in the LLN reserve. The fire in block 20A spread to other blocks and destroyed 24 hectares of rubber trees.

*Claim based on negligence*

Paragraph 7 of the further amended statement of claim reads:

> Between 11 to 30 March 1983, the board and/or its servants and/or agents had caused several fires to start on the said lands of the board and so negligently or intentionally allowed or permitted the fires which were dangerous or inherently dangerous to spread and/or escape into the plaintiff's land.

Particulars were set out. The plaintiff also relies under para 8 on the principles enunciated in *Rylands v Fletcher* (1868) LR 3 HL 330.

In this case, it is not disputed that the month of March 1983 was a sunny, hot and dry month. DW1, the defendant's transmission engineer in Kuantan at the relevant period, agreed that cut undergrowth left to dry in hot sunny weather on site constitutes a fire hazard. DW1 was aware of outbreaks of fire in the LLN reserve in the month of March, but said that it was safe to allow the fires to burn unless the fires were dangerous to the transmission lines which were at least 40ft high. His concern was obviously for the defendants's property.

It is in evidence that the agents or servants of the defendant carried out maintenance work on the LLN reserve from time to time where trees above 8ft, grass, bushes and creepers under the towers were slashed or cleared. A five-foot path along the reserve had also to be cleared so that a landrover or van could go through. The cut vegatation along the path were removed but other cut vegetation were left on site.

It was the evidence of PW1, the scheme's first manager, that the slashing of undergrowth was done at the end of January to early February 1983 and continued up to March. This was not disputed. The evidence was that for cutting the grass and bushes, parangs were used. While DW1 agreed that chainsaws were used to cut trees, it was a general statement; he did not state that they were used in early 1983. The attempt to show that the fire started from a spark or sparks from a chainsaw or chainsaws being used is highly speculative.

Except for the third fire on 17 March 1983, no proof was offered by the defendant as to how the other fires started. To speculate that employees or agents of the defendant started the other fires either through smoking in the LLN reserve or through other activity or that the fires started from sparks from engine of motor vehicles which the employees or agents of the defendant used is highly speculative.

A The evidence relating to the five fires is discussed below. It will be noticed that except in the case of two locations in the LLN reserve relating to the *first* and *fourth* fires, no evidence was adduced to show that there was cut vegetation in the other locations.

B *The first fire*

As regards the first fire on 11 March 1983, the evidence of PW1 was that on receipt of a report that there was a fire in the LLN reserve at the border of block 1A, he went to the block to investigate. He saw an area of about 20 to 30 sq ft within the LLN reserve on fire about two chains away from the scheme. He saw slashed bushes, lalang and other vegetation on fire.

C PW1 did not trespass into the LLN reserve where the fire was, but he deployed staff to patrol the area in order to prevent the fire from spreading into the scheme. The fire in the LLN reserve continued to burn and spread towards the scheme on 13 March. The plaintiff's workers tried to prevent the fire from spreading but because of strong wind and the intensity of the D fire, the fire entered the scheme at block 1A on 14 March 1983 and the fire could only be put off after three days, on 16 March 1983 after 20 hectares of rubber trees had been destroyed by fire.

*The second fire*

E As regards the second fire, this was detected in another location in the LLN reserve on 16 March 1983. PW1 went to block 22A and saw the fire in the LLN reserve. PW1 rounded his staff to prevent the fire from spreading into block 22A but because of strong wind and the intensity of the fire, the fire spread into block 22A and two hectares of rubber trees in F block 22A were destroyed.

*The third fire*

On 17 March 1983, after briefing his staff on the fires in the scheme, PW1 went to block 22A. On reaching there at 9am, he saw a LLN landrover, G WD 3012, which was parked on the agricultural road near the boundary of block 22A.

He saw three men at the landrover playing cards. He also saw three other men walking into the LLN reserve about two chains away from the boundary of the scheme. He saw them stop walking after which he saw smoke coming out from the area where they had stopped. They then H walked towards the landrover. They turned back to look at the place where they had first stopped. By that time, there was already a fire at the place where they had first stopped. The three men hurriedly left for the landrover.

PW1 questioned the three men as to who had set the fire. They said they did not know, but they said perhaps the contractors of LLN had set I the fire. PW1 did not believe what was stated and was of the view that they had started the fire.

PW1 gathered his staff to prevent the fire in the LLN reserve from spreading into the scheme, but the weather was hot and the fire spread into the scheme. A bulldozer was used to push the vegetation that was on fire

into the LLN reserve but the fire continued spreading into the scheme. The fire spread to block 23A the same day and damaged two hectares of rubber trees.

*The fourth fire*

On 26 March 1983, PW1 saw a fire in the LLN reserve to the left of block 22A. What he saw in the LLN reserve were that the bushes, lalang and other vegetation that had been slashed about a week before were burning. Due to strong wind and the intensity of the fire, the fire reached the boundary of block 22A at 5pm. Because of the hilly terrain, the fire could not be pushed back and the fire spread through blocks 22A and 23A until put under control on 27 March 1983. The fire damaged 24 hectares of rubber trees.

*The fifth fire*

The fifth fire was spotted by PW1's staff in the evening of 30 March 1983. It was a fire in block 20A. PW1 was of the view that the fire probably spread from the forest reserve about 100ft away where standing dead trees were burning; he was of the view that sparks from these burning trees were carried to block 20A by the wind. He stated that the fire in the forest reserve was from the fire on 17 March 1983 (the third fire) which had spread on to the forest reserve. He had earlier stated:

> When we pushed the burning vegetation into the LLN reserve on the 17th, the fire spread to (the) forest reserve, north and south of it and the fire also spread into (the) forest reserve on the left side of 22A and 23A.

*Findings*

It is convenient to deal here with three of the fires where I need to discuss the liability based on negligence leaving the other cases where the principle in *Rylands v Fletcher* is raised to a later discussion.

In England, as was observed by Lord Tenterden CJ in *Becquet v Mac Carthy* 2B & AD 951 at p 958:

> ... by the law of this country before it was altered by the statute 6 Ann c 31, s 6, if a fire began on a man's own premises, by which those of his neighbour were injured, the latter in an action brought for such an injury, would not be bound in the first instance to show how the fire began, but the presumption would be (unless it were shown to have originated from some external cause) that it arose from the neglect of some person in the house.

Section 86 of the Fires Prevention (Metropolis) Act 1774 was passed to replace 6 Ann c 31, s 6 (see *Musgrove v Pandelis* [1919] 2 KB 43 at p 46). It was pointed out by Lush J in *Musgrove v Pandelis* [1919] 1 KB 314 at p 317 that the 1774 Act was passed to remove the common law presumption that a fire which was not proved to have been caused by some other person was caused or kindled by the householder, and to free him from liability for fires accidentally begun (see also *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530).

A The authors of *Clerk and Linsell on Tort* (16th Ed) state that the Fires Prevention (Metropolis) Act 1774 which applies throughout England modified the common law liability by providing that no action, suit or process whatever, shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building or on B whose estate any fire shall accidentally begin. Its effect was considered in *Filliter v Phippard* (1847) 11 QB 347 when it was decided that the Act was no defence if the fire was caused by the negligence of the householder or of one of his servants, or was lit intentionally. The court held that the word 'accidental' was not used in contradistinction to wilful but to negligent, and meant 'a fire produced by mere chance, or incapable of being traced C to any cause.' In *Filliter v Phippard,* both these elements were present, as the fire was lit intentionally on the defendant's land for the purpose of burning weeds, and the negligence consisted in lighting the fire in the existing state of the wind and omitting to prevent it from spreading to the plaintiff's hedges.

D As is observed by the authors in regard to a fire caused by intention or negligence, if the occupier of a house or land starts a fire either intentionally or by negligence, he is bound at his peril to keep it from doing damage to others (*Mulholland & Ted v Baker* [1939] 3 All ER 253) subject only to certain exceptions.

E The law in Malaysia, as was pointed out by the Judicial Committee of the Privy Council in *Leong Bee & Co v Ling Nam Rubber Works* [1970] 2 MLJ 45 at p 46 is this:

> Counsel for the appellants conceded in argument, and their Lordships do not doubt rightly conceded, that in Malaysia the common law presumption F referred to in *Becquet v Mac Carthy* (1831) 2 B & Ad 951 at p 958, *Musgrove v Pandelis* [1919] 1 KB 314 and *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530 that a fire which began on a man's property arose from some act or default for which he was answerable, has no application in Malaysia and has had no application there at least since the coming into force of the Civil Law Ordinance 1956 s 3.

G Sir Frank Kitto, giving the opinion of the Privy Council, stated the reason:

> The reason is that having been displaced by statute, first by 6 Ann c 31, s 6 and later by the Fires Prevention (Metropolis) Act 1774, 14 Geo 3 c 78, s 86, the presumption formed no part of the common law of England as administered in England at that date.

H His Lordship went on to state that upon the appellants lay the burden of proof as to both negligence and nuisance, and their task at the trial was to establish, without the aid of the presumption: (a) that the respondents themselves or some person for whose conduct they were answerable had been guilty of some negligent act or omission which was a cause either of I the commencement of the fire or of its spreading to the appellants' premises; or (b) that the respondents had caused or permitted to exist on their premises a source of fire danger constituting a material injury to the appellants' property.

As regards the third fire on 17 March 1983, my view is that it was started by one or more of the employees of LLN, consistent with the evidence as regards one of the methods of disposal of cut vegetation where cut vegetation had to be disposed off, as a method of clearing up the undergrowth in the area. Obviously, there was no lightning there that morning and vegetation does not self-ignite. An occupier of a house or land who starts a fire intentionally is bound at his peril to keep it from doing damage to others (see *Mulholland & Tedd Ltd v Baker* [1939] 3 All ER 253, where a man who made a fire in his yard to smoke out a rat in a drain was held liable for the damage resulting from the fire spreading to a packing case and exploding its drum of paraffin). And the occupier 'is liable for the escape of fire which is due to the negligence not only of his servants, but also of his independent contractors and of his guests, and of anyone who is there with his leave or licence' (per Lord Denning MR in *H & N Emanuel Ltd v Greater London Council* [1971] 2 All ER 835 at p 838).

In the instant case, the fire was started by one or more servants of the defendant and the defendant is responsible for the damage arising from that fire in the LLN reserve on 17 March 1983 and spreading to and damaging the plaintiff's rubber land.

As for the fifth fire in block 20A, the view of PW1 was that it probably spread through sparks carried by the wind from dead standing trees which were burning in the forest reserve. It was in evidence, however, that when PW1 and his men pushed the burning vegetation into the LLN reserve on 17 March 1986 (the third fire), the fire spread to the forest reserve, north and south of it and it also spread into the forest reserve on the left side of blocks 22 and 23A. No doubt the plaintiff through its servants had acted in self defence to push burning vegetation into the defendant's land. But the defendant cannot be blamed for the ensuing fire spreading to the forest reserve and eventually spreading to the plaintiff's land which abutted on the forest reserve; the defendant did not cause the fire to spread to the forest reserve. In the circumstances, I do not hold the defendant liable for the fifth fire.

In regard to the second fire, the evidence showed that it started from a location in the LLN reserve and spread to block 22A. There was, however, no evidence of anyone having been seen to have started the fire or of dried or drying cut vegetation having been found at the location and this is also not a case where the principle in *Rylands v Fletcher* applies.

I now come to the other two fires.

It was pointed out earlier that an occupier of a house or land is liable for the escape of fire from his premises if his fire was caused wilfully, or by his negligence. He is also liable under the *Rylands v Fletcher* principle by the escape without negligence which has been brought into existence by some non-natural use of the land. In *Musgrove v Pandelis* [1919] 1 KB 314 at p 317, Lush J applied the principle in *Rylands v Fletcher* thus:

> But, nevertheless, I am of opinion that the statute [the Fires Protection (Metropolis) Act 1774] affords the defendant no protection; for though the

A fire in the carburettor was accidental in a popular sense, I do not think it was accidental in the sense in which that term is used in the statute. If a man brings on to his premises a dangerous thing which is liable to cause fire, such as a motor car with petrol in it, the carburettor of which is not unlikely to get on fire when the engine is started, and a fire results, though without any negligence on his part, he must be held liable, the statute notwithstanding, B for the rule is that he must keep such a thing under control at his peril. If a person uses a traction engine which emits sparks in spite of all precautions being taken to prevent their emission, he will be liable if another person's hayrick be set on fire by the sparks, upon the ground that such an engine is a dangerous machine: *Powell v Fall* (1880) 5 QBD 597. And if the principle of *Rylands v Fletcher* applies to the fire in a traction engine, it must equally C apply to a motor car in such circumstances as these.

The Court of Appeal in [1919] 2 KB 43 approved Lush J's application of the principle of *Rylands v Fletcher* in that case.

MacKenna J in *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530 at pp 541 and 542 points out that the principle cannot be D exactly that of *Rylands v Fletcher*:

> What, then, is the principle? As Romer LJ in *Collingwood*'s case [*Collingwood v Home & Colonial Stores Ltd* [1936] 3 All ER 200] pointed out [at p 206], it cannot be exactly that of *Rylands v Fletcher* (1868) LR 3 HL 330. A defendant is not held liable under *Rylands v Fletcher* unless two conditions E are satisfied: (i) that he has brought something onto his land likely to cause mischief if it escapes, which has in fact escaped; and (ii) that those things happened in the course of some non-natural use of the land. But in *Musgrove*'s case [*Musgrove v Pandelis* [1919] 2 KB 43], the car had not escaped from the land, neither had the petrol in its tank. The principle must be, Romer LJ [at p 209] said, the wider one on which *Rylands v Fletcher* itself was based, '*sic utere tuo* ...' F

MacKenna J questioned, if for the rule in *Musgrove*'s case to apply, there need be no escape of anything brought onto the defendant's land, what must be proved against him? There was, it seemed to him, a choice of alternatives. The first would require the plaintiff to prove: (i) that the G defendant had brought something onto his land likely to do mischief if it escaped; (ii) that he had done so in the course of a non-natural use of the land; and (iii) that the thing had ignited and that the fire had spread. The second would be to hold the defendant liable if: (i) he brought onto his land things likely to catch fire, and kept them there in such conditions that if they did ignite, the fire would be likely to spread to the plaintiff's land; H (ii) he did so in the course of some non-natural use; and (iii) the things ignited and the fire spread. MacKenna J thought that the second test was the more reasonable one; to make the likelihood of damage if the things escapes a criterion of liability, when the thing has not in fact escaped but has caught fire, would not be very sensible.

I MacKenna J applied the second test in the case before him, asking himself two questions:

(i) Did the defendants in the case bring to their land things likely to catch fire, and keep them there in such conditions that if they did ignite, the fire would be likely to spread to the plaintiff's land?

(ii ) If so, did the defendants do these things in the course of some non-natural use of the land? A

I adopt the same approach in this case. In respect of the first and fourth fires, the evidence was that the cut vegetation was on fire in both locations in the LLN reserve. The burning vegetation must surely have been the vegetation that had been cut by the defendant's employees or agents and B left lying in various parts of the LLN reserves. This was not disputed. DW1 admitted that cut vegetation which were not along the path cleared for vehicles were left on site. DW1 knew that the month of March was a hot, sunny and dry month and that fires could break out from the combustible cut vegetation lying around. In fact, there were outbreaks of C fire in March as stated by DW1 and the fires were allowed to burn as they did not affect the transmission lines which were at least 40ft above the ground. But DW1 and his workers were aware that in some areas that LLN reserve bordered on the scheme (as was in the locations of the first and fourth fires) where rubber trees, also affected by the hot dry weather and combustible, had been planted. If the cut vegetation ignited, the fire D would certainly spread to the plaintiff's scheme. To my mind, the defendant's use of the land in the two locations was non-natural. In my view, the defendant is liable for the first and fourth fires.

To sum up, I do not find the defendant liable for the second and fifth fires. I find the defendant liable in negligence for the act or acts of its E servant or servants for the third fire. As for the first and fourth fires, applying the principle in *Rylands v Fletcher*, I find the defendant liable for the first and fourth fires.

There is still the issue of damages. When evidence was adduced with regard to damages, it was in relation to all the blocks of rubber estates F affected by all the five fires. There are many areas of overlapping claims and counsel on both sides would need to unravel the areas of overlapping so that damages may be calculated for those trees damaged by the fires for which I hold the defendants liable. Both parties have agreed to try to come to a settlement on quantum, within a period of two weeks, failing which they will come back to court to ask for further direction. G

There will be judgment for the plaintiff in respect of the damage caused by the first, third and fourth fires. Three-fifths of the costs to the plaintiff.

*Order accordingly.* H

Reported by Yong Yuan Kea

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